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ment. From a decree of dismissal, complainant appeals. Affirmed.

*L. P. Summers*, of Abingdon, for appellant.

*White, Penn & Penn*, of Abingdon, and *Powell, Price & Shelton*, of Johnson City, Tenn., for appellees.

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WHITTLE *v.* DAVIE.

June 11, 1914. Rehearing Denied Sept. 5, 1914.

[82 S. E. 724.]

**Partnership (§ 305\*)—Division of Capital and Profits—"Good Will."**—D. and W. were partners, D. contributing two-thirds of the capital and W. one-third. W. was to receive an annual salary of \$5,000, one-third of the earnings after payment of such salary up to \$30,000, and one-half of the earnings in excess of that amount. The partnership plant and business with the good will were sold to a corporation organized to acquire the properties of a number of independent companies, and capitalized so that the average earnings of the constituent companies for the four years preceding its organization would represent approximately 8 per cent. per annum of the capital. The property of the various constituent companies was paid for in preferred stock; the owners being required to buy an equal amount of preferred stock. The balance of the capital stock was common stock, and two-fifths thereof was issued to the owners of the various properties in proportion to the plant value and cash contributed, and the remaining three-fifths in proportion to the earnings of each plant. The earnings of the partnership up to the time of the sale had been divided between the partners under the partnership agreement. Held, that the partnership's share of the three-fifths of the common stock should be divided in proportion to the partners' contribution to the partnership capital, since it did not represent earnings, but earning capacity, and was the price paid for the "good will" of the partnership, which is the advantage or benefit acquired by an establishment beyond the mere value of the capital stock, funds, or property employed therein, in consequences of the general public patronage and encouragement received from constant or habitual customers, on account of its local position, celebrity, reputation for skill, affluence, or punctuality, or other accidental circumstances or necessities, or even from ancient partialities or prejudices (citing 4 Words and Phrases, p. 3128).

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 702-705; Dec. Dig. § 305.\* 10 Va.-W. Va. Enc. Dig. 886, 890.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

For other definitions, see Words and Phrases, Vol. 4, pp. 3128-3130, Vol. 8, p. 7673.]

Appeal from Circuit Court of City of Petersburg.

Suit for a partnership accounting between one Whittle and one Davie. From the decree, Whittle appeals. Affirmed.

*Wm. B. McIlwaine*, of Petersburg, for appellant.

*R. B. Davis*, of Petersburg, *Turnbull & Turnbull*, of Lawrenceville, and *Christian, Gordon & Christian*, of Richmond, for appellees.

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HONAKER et al. v. NEW RIVER, H. & W. R. CO.

Sept. 7, 1914.

[82 S. E. 727.]

**1. Eminent Domain (§ 195\*)—Condemnation Proceedings—Issues—Plea.**—Where, in proceedings by a railroad company to condemn land for a right of way, defendant's first plea denied every allegation of fact in the petition, such plea put in issue the question whether the extension of the road, for which the right of way was sought, had been authorized, or the survey through defendants' land adopted by the company as a corporation.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 524; Dec. Dig. § 195.\* 5 Va.-W. Va. Enc. Dig. 101.]

**2. Eminent Domain (§ 169\*)—Condemnation—Railroad Extension—Location—Authorization by Board of Directors.**—Where, in proceedings by a railroad company to condemn land for an extension, the railroad's right to condemn the land was put in issue, and there was no proof that the railroad's directors as a board had ever authorized the extension of the line or had ratified the act of its general manager in attempting to procure land for such extension, the proceeding was unsustainable.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 461; Dec. Dig. § 169.\* 5 Va.-W. Va. Enc. Dig. 98, 101.]

Error to Circuit Court, Bland County.

Condemnation proceedings by the New River, Holston & Western Railroad Company against one Honaker and others. Judgment for plaintiff, and defendants bring error. Reversed.

*S. W. Williams*, of Wytheville, *S. W. Williams, Jr.*, of Bland, and *J. Powell Royal*, of Tazewell, for plaintiffs in error

*Williams & Farrier*, of Pearisburg, *Jackson & Henson*, of Roanoke, and *White, Penn & Penn*, of Abingdon, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.